

STATE OF MICHIGAN
COURT OF APPEALS

ROY A. WELCH,

Plaintiff-Appellant,

v

CITY OF BROWN CITY,

Defendant-Appellee.

UNPUBLISHED

May 24, 2005

No. 252082

Sanilac Circuit Court

LC No. 01-028244-NZ

Before: Bandstra, P.J., and Fitzgerald and Meter, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court judgment awarding him only equitable relief. This appeal is being decided without oral argument pursuant to MCR 7.214(E). We affirm.

Raw sewage backed up into plaintiff's home, and he subsequently filed suit seeking equitable and monetary damages from defendant on a theory of trespass-nuisance. Defendant objected to the testimony of plaintiff's real estate appraiser on the ground that he did not prepare a written appraisal of plaintiff's property as required by MCL 339.2609. The trial court took the issue under advisement and allowed the appraiser to testify. The appraiser testified that the value of plaintiff's home prior to the backup was \$128,000, but that the backup rendered the home worthless because no buyer with knowledge of the problem would purchase the property. He acknowledged that he was unaware of any available sales comparison data that demonstrated a reduction in the fair market value of residential properties due to prior sewer backups. Plaintiff opined that his home was worthless due to the sewer backup.

The trial court found defendant liable on the ground that the backup occurred due to a defect in the sewer system. The trial court excluded the appraiser's testimony regarding the value of plaintiff's home following the backup, finding that the testimony was not supported by a written appraisal or any other relevant market information. The trial court granted plaintiff equitable relief in the form of an order requiring defendant to repair its sewer system, but declined to award monetary damages on the ground that plaintiff presented no evidence to support such an award.

Plaintiff first argues that the trial court abused its discretion by excluding the appraiser's testimony regarding the value of his property following the backup. We disagree. We review a trial court's ruling on the admissibility of expert opinion testimony for an abuse of discretion. *Mulholland v DEC Int'l Corp*, 432 Mich 395, 402; 443 NW2d 340 (1989).

“The requirements for the admission of expert testimony are: (1) the witness must be an expert; (2) there must be facts in evidence which require or are subject to examination and analysis by a competent expert; and (3) there must be knowledge in a particular area that ‘belongs more to an expert than to the common man.’” *King v Taylor Chrysler-Plymouth, Inc.*, 184 Mich App 204, 215; 457 NW2d 42 (1990), quoting *O’Dowd v Linehan*, 385 Mich 491, 509-510; 189 NW2d 333 (1971). “MRE 702 requires the trial court to ensure that each aspect of an expert witness’s proffered testimony—including the data underlying the expert’s theories and the methodology by which the expert draws conclusions from that data—is reliable.” *Gilbert v DaimlerChrysler Corp.*, 470 Mich 749, 779; 685 NW2d 391 (2004). The facts or data on which an expert bases an opinion or inference must be in evidence, but the trial court may receive expert testimony subject to the condition that the factual bases of the opinion be admitted in evidence at a later time. MRE 703.

Here, the appraiser readily admitted that his opinion was not supported by an analysis of market information. Because the expert’s opinion was based on speculation and not on reliable data, as required by MRE 702, we find that the trial court did not abuse its discretion by excluding the testimony.

Plaintiff next argues that the trial court erred by failing to award him monetary damages in addition to the equitable relief. We disagree. We review a trial court’s award of damages following a bench trial for clear error. *Marshall Lasser, PC v George*, 252 Mich App 104, 110; 651 NW2d 158 (2002). An award of damages cannot be based on speculation or conjecture, although mathematical certainty in the calculation of damages is not required. *Bonelli v Volkswagen of America, Inc.*, 166 Mich App 483, 511; 421 NW2d 213 (1988).

Plaintiff did not attempt to sell his home following the incident, and provided no evidence regarding expenses incurred for cleanup efforts, repairs, etc. Because no evidence was presented to support an award of monetary damages, we find that the trial court did not clearly err in declining to award them to plaintiff.

We affirm.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Patrick M. Meter